

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: UBER TECHNOLOGIES, INC.,
PASSENGER SEXUAL ASSAULT
LITIGATION

MDL No. 3084 CRB

This Order Relates To:

ALL ACTIONS

**PRETRIAL ORDER NO. 18:
ORDER ON MOTIONS TO
DISMISS PURSUANT TO
FLORIDA, ILLINOIS, AND NEW
YORK LAW**

I. BACKGROUND

A. Procedural Background

On August 15, 2024, the Court issued an order deciding Uber's Motions to Dismiss pursuant to the law of Texas and California. Pretrial Order No. 17: Order on Motions to Dismiss Pursuant to California and Texas Law (dkt. 1044). After issuing that order, the Court asked the parties to state their positions on how the Court's order should be applied to Uber's Motions to Dismiss under the laws of Florida, Illinois, and New York. Having received the parties' positions, the Court now decides Uber's remaining Motions to Dismiss. A more complete accounting of the procedural and factual background of this case, as well as a summary of the allegations in Plaintiffs' Master Complaint, can be found in the prior order.

In each of its Florida, New York, and Illinois Motions to Dismiss (dkt. 386, 385, 388), Uber moves to dismiss all pleaded claims except for Plaintiffs' core negligence claims. The following table indicates the parties' positions on how the Court should

decide those motions in light of its prior order, as stated in their supplemental briefs. See dkt. 1637, 1641.

	Florida	Illinois	New York
Claim B: Negligent Entrustment Only	Grant	Grant	Grant
Claim C: Fraud and Misrepresentation	Grant	Grant	Grant
Claim D: Negligent Infliction of Emotional Distress (“NIED”)	Disputed	Grant	Grant
Claim E: Common Carrier Non-Delegable Duties	Disputed	Disputed	Not Pled
Claim F: Other Non-Delegable Duties	Grant	Grant	Grant
Claim G.1: Respondeat Superior	Withdrawn	Disputed	Not Pled
Claim G.2: Apparent Agency	Grant	Disputed	Grant
Claim G.3: Ratification	Grant	Grant	Grant
Claim H: Products Liability	Grant	Grant	Grant
Claim I: Injunctive Relief	Grant	Grant	Grant
Punitive Damages	Deny	Deny	Deny

Since the Plaintiffs concede that most of the claims challenged by Uber’s motions should be dismissed in light of the Court’s previous order, the Court does so now. Uber’s Motion to Dismiss under the law of Florida is granted as to the following claims: Claim B (Negligent Entrustment only), Claim C (Fraud and Misrepresentation), Claim F (Other Non-Delegable Duties), Claim G (as to Apparent Agency and Ratification theories of Vicarious Liability), H (Products Liability), and Claim I (Injunctive Relief). Uber’s Florida Motion is denied as to punitive damages. Uber’s Motion to Dismiss under the law of Illinois is granted as to the following claims: Claim B (Negligent Entrustment only), Claim C (Fraud and Misrepresentation), Claim D (Negligent Infliction of Emotional Distress), Claim F (Other Non-Delegable Duties), Claim G.3 (Ratification), H (Products Liability), and Claim I (Injunctive Relief). Uber’s Illinois Motion is denied as to punitive damages. Uber’s Motion to Dismiss under the law of New York is granted as to all

1 challenged claims and is denied as to punitive damages.

2 With these undisputed matters out of the way, the Court now turns to four disputed
3 issues: (1) whether Florida’s transportation network company (“TNC”) statute bars
4 vicarious liability, (2) whether the Florida and Illinois TNC statutes bar common carrier
5 liability, (3) Plaintiffs’ NIED claim under Florida law, and (4) whether intentional torts can
6 be considered within the scope of employment under Illinois law. The Court applies the
7 same legal standard to these issues as discussed in its prior order on Uber’s California and
8 Texas motions to dismiss. See Pretrial Order No. 17 at 8.

9 **II. DISCUSSION**

10 **A. Vicarious Liability Statute (Florida)**

11 As it did in its Texas Motion to Dismiss, Uber invokes Florida’s TNC Statute as a
12 bar to vicarious liability. This statute reads, in relevant part:

13 (18) Vicarious liability.--

14 (a) A TNC is not liable under general law by reason of owning,
15 operating, or maintaining the digital network accessed by a TNC
16 driver or rider, or by being the TNC affiliated with a TNC driver,
17 for harm to persons or property which results or arises out of the
18 use, operation, or possession of a motor vehicle operating as a
19 TNC vehicle while the driver is logged on to the digital network
20 if:

1. There is no negligence under this section or criminal
wrongdoing under the federal or Florida criminal code on the
part of the TNC;
2. The TNC has fulfilled all of its obligations under this section
with respect to the TNC driver; and
3. The TNC is not the owner or bailee of the motor vehicle that
caused harm to persons or property.

21 Fla. Stat. § 627.748(18).

22 Plaintiffs, for their part, argue that sexual assault is not the sort of harm envisioned
23 by the statute, and it thus does not apply here. They hang their hat on subclause 18(a)(3),
24 which requires that the TNC not own “the motor vehicle that caused harm to persons or
25 property” for the section to apply. Id. In Plaintiffs’ eyes, this means the statute precludes
26 vicarious liability for only those harms that are caused by motor vehicles (i.e., car
27 accidents). The Court considered similar arguments regarding Texas’s TNC Statute and
28 found the statute precluded vicarious liability. See Pretrial Order No. 17 at 12–14. For

1 similar reasons as discussed there, the Court finds Florida’s TNC statute encompasses
2 sexual assault.

3 As the Court noted with regard to the Texas TNC statute, “[d]eciding how the TNC
4 [statute] applies to claims for sexual assaults by rideshare drivers is an exercise in statutory
5 interpretation.” Dkt. 1044 at 13. In Florida, as in Texas, “[t]he goal of statutory
6 interpretation is to identify the Legislature’s intent.” Schoeff v. R.J. Reynolds Tobacco
7 Co., 232 So. 3d 294, 301 (Fla. 2017). “If the plain meaning of the language is clear and
8 unambiguous, then the Court need not delve into principles of statutory construction unless
9 that meaning leads to a result that is either unreasonable or clearly contrary to legislative
10 intent.” Polite v. State, 973 So. 2d 1107, 1111 (Fla. 2007), as clarified (Jan. 24, 2008).

11 The plain meaning of the statute’s language indicates a legislative intent for broad
12 limitation of a TNC’s vicarious liability. Plaintiffs’ point that subclause 18(a)(3) only
13 contemplates harms caused by motor vehicles is well-taken, but the language used in its
14 parent clause clearly contemplates other harms: those “result[ing] or aris[ing] out of the
15 use, operation, or possession of a motor vehicle operating as a TNC vehicle while the
16 driver is logged on to the digital network.” Fla. Stat. § 627.748(18)(a). If the legislature
17 intended to limit the covered harms to just car accidents, it would not have defined those
18 harms so broadly in the introductory paragraph. Further, for the vicarious liability bar to
19 apply, the Florida TNC statute requires that “[t]he TNC has fulfilled all of its obligations
20 under this section with respect to the TNC driver,” including screening drivers for prior
21 offenses like sexual battery. Id. at (12)(d)(1)(c). As the Court noted in its prior order,
22 “[c]onditioning the statute’s protections on compliance with these obligations would make
23 little sense if the statute were only applicable to car accidents.” Pretrial Order No. 17 at
24 14. The Court thus finds the text of the statute is sufficiently clear to determine it
25 encompasses sexual assault and precludes Uber from being found vicariously liable for
26 such harms.

27 Plaintiffs point out that this section of the statute became effective on June 23,
28 2020. Thus, any vicarious liability claims based on incidents occurring before that date

1 remain unaffected by the Florida TNC statute's vicarious liability bar.

2 **B. Common Carriers' Non-Delegable Duties (Florida and Illinois)**

3 Uber moves the Court to dismiss Claim E under both Florida and Illinois law
4 because each state's TNC statute carves out TNCs as common carriers. Plaintiffs dispute
5 this point with regard to Florida law but tacitly concede Illinois's TNC Statute precludes
6 common carrier liability, at least before it was repealed on January 1, 2024. See Plaintiffs'
7 Suppl. Br. (dkt. 1637) at 3–4.

8 Plaintiff's arguments that Florida's TNC statute only applies for regulatory
9 purposes are as unavailing under Florida law as they were under Texas law. See Pretrial
10 Order No. 17 at 31, n.11. Florida's statute is clear: TNCs are not common carriers. Judge
11 Chesney considered virtually identical arguments over Florida's TNC Statute in an
12 unrelated case in this District, and the Court sees no reason to depart from that precedent.
13 See Means v. Lyft, Inc., 2024 WL 3012795, at *4 (N.D. Cal. June 13, 2024).

14 But although the statutes dictate that Uber was not a common carrier for the time
15 they were in place, neither statute has been in place for the entire period covered by the
16 Master Complaint, and neither statute is retroactive. As the Illinois TNC Statute was
17 repealed January 1, 2024, common carrier claims relating to any incidents which occurred
18 after that date are not affected by the statute. The Florida statute is still valid law but did
19 not become effective until July 1, 2017. Thus, common carrier claims relating to incidents
20 that occurred before that date are similarly not affected by the statute. With some number
21 of common carrier claims still live under both Florida and Illinois law, the Court now turns
22 to analyzing the scope of Uber's duties as a common carrier in each state.

23 Florida and Illinois have similar definitions of a common carrier. Fla. Stat. §
24 908.111 (“‘Common carrier’ means a person, firm, or corporation that undertakes for hire,
25 as a regular business, to transport persons or commodities from place to place, offering his
26 or her services to all such as may choose to employ the common carrier and pay his or her
27 charges.”); Browne v. SCR Med. Transp. Servs., Inc., 356 Ill. App. 3d 642, 646, 826
28 N.E.2d 1030, 1034 (2005) (“a common carrier is one who undertakes for the public to

1 transport from place to place such persons or the goods of such persons as choose to
2 employ him for hire.”) (internal quotations and citations removed). There seemingly can
3 be no doubt that for the period not covered by the applicable TNC Statute, Uber would
4 meet the definition of a common carrier in both states.

5 Florida law imposes a duty on common carriers that “includes vicarious liability for
6 the torts of employees visited upon a passenger while the contract for transport is being
7 accomplished.” Nazareth v. Herndon Ambulance Serv., Inc., 467 So. 2d 1076, 1081 (Fla.
8 Dist. Ct. App. 1985). It is of no moment whether or not “the employee's actions fall
9 outside the scope of employment.” Nadeau v. Costley, 634 So. 2d 649, 652 (Fla. Dist. Ct.
10 App. 1994). Rather, Florida courts apply a “strict liability rule for employee assaults in
11 common carrier-passenger cases.” Doe v. Celebrity Cruises, Inc., 394 F.3d 891, 915 (11th
12 Cir. 2004).

13 Similarly, in Illinois, “[c]ommon carriers owe their passengers the highest degree of
14 care.” Green v. Carlinville Cmty. Unit Sch. Dist. No. 1, 381 Ill. App. 3d 207, 213, 887
15 N.E.2d 451, 456 (2008). This duty extends to “the intentional acts of its employees, even
16 if those acts are committed outside the scope of employment.” Dennis v. Pace Suburban
17 Bus Serv., 2014 IL App (1st) 132397, ¶ 16, 19 N.E.3d 85, 92. It is clear to the Court that
18 common carrier liability would extend to sexual assaults by drivers against passengers
19 under both Florida and Illinois law.

20 Uber’s only argument around this issue is a brief reference to three decisions from
21 other states suggesting disagreement with these longstanding principles of common law.
22 See Uber’s Omnibus Reply at 21–22, n.12. The Court finds this argument unconvincing.
23 Therefore, for cases arising in the period before Florida’s TNC Statute became effective,
24 the Court denies Uber’s Florida Motion to Dismiss as to Claim E and further finds Uber’s
25 common carrier non-delegable duties can form an independent basis for vicarious liability
26 under Florida law. For cases arising in the period after Illinois’s TNC Statute was
27 repealed, the Court denies Uber’s Illinois Motion to Dismiss as to Claim E and finds
28 Uber’s common carrier non-delegable duties can form an independent basis for vicarious

liability under Illinois law.

C. Claim D: Negligent Infliction of Emotional Distress (Florida)

Uber moves to dismiss Plaintiffs' claim for the negligent infliction of emotional distress (NIED) under Florida law. The elements for NIED are:

(1) the plaintiff must suffer a physical injury; (2) the plaintiff's physical injury must be caused by the psychological trauma; (3) the plaintiff must be involved in some way in the event causing the negligent injury to another; and (4) the plaintiff must have a close personal relationship to the directly injured person.

Zell v. Meek, 665 So. 2d 1048, 1054 (Fla. 1995).

Plaintiffs have not alleged that any other persons were involved in the underlying assaults, let alone that such a person had a relationship with the plaintiff. Thus, their allegations cannot support elements (3) or (4) of an NIED claim.

Plaintiffs rely on Florida's "impact rule" to carry their NIED claim, despite not meeting the claim's elements. But the "impact rule" is better understood as a limit on the scope of recovery for emotional suffering rather than to expand the definition of NIED. See Rowell v. Holt, 850 So. 2d 474, 478 (Fla. 2003) ("The impact rule has been traditionally applied primarily as a limitation to assure a tangible validity of claims for emotional or psychological harm."). As such, Plaintiffs' claim for negligent infliction of emotional distress under Florida law is dismissed.

D. Claim G: Vicarious Liability (Illinois)

Finally, Plaintiffs maintain a tenuous grip on two theories of vicarious liability under Illinois law: respondeat superior and apparent agency. Both theories, Plaintiffs say, rise and fall on whether Uber authorized or enabled the conduct of their drivers. See Plaintiff's Suppl. Br. at 4. The question for both theories turns, in other words, on whether the alleged sexual assaults were within the scope of employment. As Plaintiffs point out, the analysis required here is different from that the Court's applied in its prior Order on California law, because "California does not follow the traditional common law rule that intentional torts can only be considered 'within the scope of employment' where the employee acts to serve the employer's interests." Pretrial Order No. 17 at 15 (citing Lisa

1 M. v. Henry Mayo Newhall Meml. Hosp., 907 P.2d 358, 361 (Cal. 1995)).

2 The traditional common law rule the Court referenced bars Plaintiffs' remaining
3 vicarious liability theories. Illinois law is clear on the matter. In a nearly identical context
4 (sexual assaults by a ridesharing company driver), an Illinois appeals court noted that "an
5 act of sexual assault, by its very nature, precludes the conclusion that it was committed
6 within the scope of employment." Doe v. Lyft, Inc., 2020 IL App (1st) 191328, ¶ 19, 176
7 N.E.3d 863, 870 (internal quotations and citations removed). Indeed, "in Illinois the cases
8 are clear that as a matter of law acts of sexual assault are not within the scope of
9 employment." Deloney v. Bd. of Educ. of Thornton Twp., 666 N.E.2d 792, 799 (Ill. App.
10 Ct. 1996).

11 To overcome these clear statements of Illinois law, Plaintiffs rely on two federal
12 decisions. One is Doe v. Roe, a 2013 case in which an on-duty police officer sexually
13 assaulted the plaintiff, who sued the police department that employed the assailant. The
14 court denied a motion to dismiss the plaintiff's respondeat superior claims, finding that the
15 sexual assault could be considered within the police officer's scope of employment. Doe
16 v. Roe, 2013 WL 2421771, at *4 (N.D. Ill. June 3, 2013). Uber urges the Court to reject
17 this precedent as a being a member of a "group of inapposite cases involving police abuse"
18 of power. Omnibus Reply at 6. But the Court need not parse whether the scope of a police
19 officer's employment is different from that of another employee because the reasoning of
20 Doe v. Roe has been explicitly rejected by the appellate courts of Illinois. See Powell v.
21 City of Chicago, 2021 IL App (1st) 192145, ¶ 27, 197 N.E.3d 219, 226 (stating, in a
22 discussion of Doe v. Roe and similar federal cases, "[t]hese cases fail to convince us to
23 diverge from the strong precedent set forth by this court; specifically, they fail to explain
24 how sexual assault is the kind of conduct that a police officer is employed to perform and
25 how sexual assault furthers an employer's business."). Although Illinois appellate courts
26 have not commented on the other case Plaintiffs rely on, Jones v. Patrick & Assocs.
27 Detective Agency, Inc., 442 F.3d 533 (7th Cir. 2006), Doe v. Roe relies heavily on its
28 reasoning to reach its conclusion. See 2013 WL 2421771 at *4. The Court is convinced

Illinois courts would be no more compelled by Jones than they are Doe v. Roe. Therefore, the Court declines to adopt the rule articulated in those cases.

As sexual assault cannot be considered within the scope of employment under Illinois law, Plaintiffs' remaining vicarious liability theories must be dismissed.

III. CONCLUSION

For the foregoing reasons, the Court orders as follows:

Uber's Motion to Dismiss under the law of Florida is granted as to the following claims: Claim B (Negligent Entrustment only), Claim C (Fraud and Misrepresentation), Claim D (Negligent Infliction of Emotion Distress), Claim E (Common Carriers' Non-Delegable Duties, in part, as discussed above), Claim F (Other Non-Delegable Duties), Claim G (Vicarious Liability, in part, as discussed above), H (Products Liability), and Claim I (Injunctive Relief). Uber's Florida Motion is denied as to punitive damages and those vicarious liability and common carrier claims not excluded by Florida's TNC Statute, as discussed above.

Uber's Motion to Dismiss under the law of Illinois is granted as to the following claims: Claim B (Negligent Entrustment only), Claim C (Fraud and Misrepresentation), Claim D (Negligent Infliction of Emotional Distress), Claim E (Common Carriers' Non-Delegable Duties, in part, as discussed above), Claim F (Other Non-Delegable Duties), Claim G (Vicarious Liability, in part, as discussed above), H (Products Liability), and Claim I (Injunctive Relief). Uber's Illinois Motion is denied as to punitive damages and those vicarious liability and common carrier claims not excluded by Illinois's TNC Statute, as discussed above.

Uber's Motion to Dismiss under the law of New York is granted as to all challenged claims and is denied as to punitive damages.

Dismissal is with leave to amend.

IT IS SO ORDERED.

Dated: October 7, 2024



CHARLES R. BREYER
United States District Judge